

It is also implicit from that judgment that a branch of the High Court located in any state has concurrent jurisdiction to entertain any civil proceedings; otherwise the mere consent of the parties given under section 23(1) of the 1964 Act that a civil suit be tried in a state other than the state where the four criteria are applicable would be otiose simply because if a court has no jurisdiction to deal with a matter no consent of the parties can confer jurisdiction on the court.

For the above reasons I hold that this court certainly has jurisdiction to entertain the present civil proceedings notwithstanding that the four criteria stipulated in section 23(1) of the 1964 Act are not applicable.

However, that is not the end of the matter since the defendants have also contended that this court is not the proper or convenient forum to determine the dispute between the parties. To this contention, I agree. It is quite obvious that in creating a branch of the High Court in Malaya in each state, the legislature had two things in mind:

- (i) to enable the parties of a civil suit to have easy access to a branch of the High Court in Malaya located in a state where either the plaintiff or the defendant resides. When a person is sued for breach of contract or for that matter a tortious act when the breach or the tort was committed in the state where he resides, it is certainly unreasonable to require him to travel all the way, say, to Kuala Lumpur to defend himself. Apart from the expense incurred, the defendant may have to remain in Kuala Lumpur perhaps one week to participate in the civil proceedings. No doubt he would be compensated in terms of costs should he succeed in defending himself but the inconvenience caused may outweigh the amount of costs awarded to him;
- (ii) the obvious reason for the setting up of a branch of the High Court in Malaya in every one of the 11 states is to facilitate the disposal of cases in Malaya and to cut down, even if it is not yet possible to obliterate, the backlog of cases pending in any one or more of the branches of such High Court.

For the reasons as stated above, I do not think that the present civil proceedings should be dealt with by this court. I am also of the view that it is for the defendants to apply to this court for a transfer of the civil suit and the application made

A by the plaintiffs under Order 81(1) to the High Court in Malaya at Penang or Kuala Lumpur since the cause of action arose in Penang but the parties have their places of business in Kuala Lumpur.

B Turning to the second issue concerning the irregularity of the application, all I can say is that when the applicant is seeking the aid of Order 81 there is an option either to set out the reliefs of the judgment sought by the plaintiff in the summons or attached thereto minutes of the judgment sought by the plaintiffs – (see Order 81 rule 2 of the Courts of Judicature Act) – and it is not mandatory that an application for Order 81 must in all cases have the minutes of the judgment sought for attached to the summons although in practice minutes of the judgment are normally attached to the summons. In any event the failure to attach the said minutes to the summons is in my view not fatal; it is curable under Order 2 rule 1 of the High Court Rules. I therefore cannot accede to the learned defence counsel's contention that the application made by the plaintiff is bad and therefore must be struck out.

E On the question of costs I think it is fair for me to make no order as to costs in view of the circumstances of this case.

Order accordingly.

F Solicitors: *Syarikat Choe; Syed Alwi, Ng & Teoh.*

G **M.K. SELLADURAI v. C. MARIMUTHU**

[O.C.J. (Mustapha Hussain J.) 26 February 1988]

[Seremban – Originating Summons No. 31-96 of 1986]

H *Civil Procedure – Injunction – Setting aside – Exceptional circumstances – Costs and damages – Whether should be awarded.*

The applicant sought an injunction to restrain the respondent from conducting or holding or carrying on the annual general meeting of an association of which the respondent was the president.

I The injunction, which was granted, was later discharged at the instance of the respondent. The respondent thereafter applied for costs and damages that arose out of his application to set aside the injunction.

Held: (1) normally, costs follow the event. The successful party is entitled to costs. It is only in exceptional circumstances where the successful party had misconducted

himself, had neglected or had omitted to do what he ought to, will the successful party be deprived of the costs;

(2) this was a case where the costs should not be given as it would further sow the seeds of dissension. The exercise of the injunction had benefited the association as a whole. No costs were awarded and damages as well as the costs shall lay where they fell.

ORIGINATING SUMMONS.

K.K.P. Nathan for applicant.

Joseph Chia En Tet for the respondent.

Cur. Adv. Vult.

Mustapha Hussain J.: This is an application for costs and damages by the respondent arising out of his application to set aside the injunction obtained by the applicant, which was indeed set aside but under circumstances which will be reverted to later.

The applicant had on 7 March 1986 by *ex parte* application applied for an injunction restraining the respondent as president of the Ceylonese Association of Negeri Sembilan from conducting or holding or carrying on the annual general meeting.

The applicant had observed that some non-Ceylonese members were participating in the election of office-bearers, contrary to rule 5 of the rules of the Association. The applicant had written to the respondent as president and the council of management *vis-a-vis* the non-Ceylonese members and he requested the respondent to verify these memberships. The applicant had also asked the respondent and the council to set up an independent body to review these members and the membership register before the scheduled annual general meeting and if there is a delay, to postpone the A.G.M. The honorary general secretary on behalf of the respondent did not deny the various allegations but asked the applicant to bear with the officials who would see that everything possible would be done for the smooth running of the elections. The contention was that the non-Ceylonese members should be associate members with no voting rights.

A Since the applicant did not receive a satisfactory reply, he had no alternative but to seek the aid of the court, hence the injunction.

B The injunction was subsequently discharged on the application of the respondent and the court also ordered the A.G.M. to be held within six weeks from the date thereof.

C Normally, costs follow the event. The successful party is entitled to costs. It is only in exceptional circumstances, where the successful party had misconducted himself, had neglected or had omitted to do what he ought to, will the successful party be deprived of the costs.

D In this case, the applicant had made representations to the respondent. He feared not for himself but for the Association as a whole. He had no personal profit motive. He acted for the benefit of the Association, though it may not be well founded. He had sued the respondent as president of the same Association. Both applicant and respondent had no personal profit to gain or to lose.

E On the other hand, the replies given on behalf of the respondent were not sufficient to allay the fears entertained by the applicant. There was nothing clear-cut that non-Ceylonese members would be in a position to vote at the A.G.M. The respondent had not sufficiently conducted himself as president to allay these fears even though unfounded.

F And as such, this is a case where the costs should not be given as it would further sow the seeds of dissension.

G After all, the exercise of the obtaining the injunction had benefited the Association as a whole.

H I award no costs and it follows the damages as well as the costs shall lay where they fell.

Order accordingly.

Solicitors: *K.K.P. Nathan & Co.; Chan & Chia.*